

200309810-1

10/696,330

REMARKS

This is a full and timely response to the non-final Official Action mailed **August 3, 2007**. Reconsideration of the application in light of the following remarks is respectfully requested.

Claim Status:

Claims 19-51 have been withdrawn from consideration under a previous Restriction Requirement. To expedite the prosecution of this application, withdrawn claims 19-51 are cancelled by the present paper without prejudice or disclaimer. Applicant reserves the right to file continuation or divisional applications as permitted by 37 C.F.R. to the withdrawn claims or to any other subject matter described in the present application.

No other claims are amended, cancelled or added. Thus, claims 1-18 are currently pending for further action.

Prior Art:

Claims 1-18 were rejected under 35 U.S.C. § 103(a) over the combined teachings of U.S. Patent App. Pub. No. 2004/0266943 to Oriahki ("Oriahki") and U.S. Patent App. Pub. No. 2005/0079086 to Farr et al. ("Farr"). This rejection is respectfully traversed under 35 U.S.C. § 103(c).

35 U.S.C. § 103(c) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

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Applicant notes that both Oriahki and Farr are available as prior art against the present application *only* under 35 U.S.C. § 102(e). The present application was filed October 28, 2003. Oriahki was filed June 24, 2003, but not published until December 30, 2004. Consequently, Oriakhi is available as prior art against the present application only under 35 U.S.C. § 102(e). Similarly, Farr was filed October 14, 2003, but not published until April 14, 2005. Consequently, Farr is also available as prior art against the present application only under 35 U.S.C. § 102(e).

Applicant also notes that all of the applications in question are assigned to the Hewlett-Packard Development Co., L.P. Specifically, the present application is assigned to the Hewlett-Packard Development Co., L.P. as evidenced by the recorded assignment at reel/frame 014658/0427. Oriahki is also assigned to the Hewlett-Packard Development Co., L.P. as evidenced by the recorded assignment at reel/frame 014458/0603. And, Farr is also assigned to the Hewlett-Packard Development Co., L.P. as evidenced by the recorded assignment at reel/frame 014618/0295.

Applicant hereby states that the subject matter of the present application and the Oriahki and Farr references was, at the time the invention of the present application was made, owned by, or subject to an obligation of assignment to, the same person, i.e., Hewlett-Packard Development Co., L.P. (*See MPEP § 706.02(I)(2)*).

Consequently, under 35 U.S.C. § 103(c), neither the Oriahki nor the Farr reference can be applied as prior art against the present application under 35 U.S.C. § 103(a). Therefore, the rejection of claims 1-18, which applies Oriahki and Farr under § 103(a), must be reconsidered and withdrawn.

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Claims 1-18 were also provisionally rejected on grounds of non-statutory obviousness-type double patenting in view of co-pending Application No. 10/696,335 to Farr et al. ("Farr-2") in view of U.S. Patent App. Pub. 2005/00079086 to Farr et al. (cited above). Applicant notes that the co-pending application cited, Application No. 10/696,335, was filed on the same date as the present application. Applicant further notes that this is a *provisional* rejection in that the co-pending application, Application No. 10/696,335, has not been allowed.

As explained in the MPEP § 804, when a provisional double patenting rejection is the only rejection remaining in one of two co-pending applications, that application is to be allowed to issue. A terminal disclaimer may then be required in the second of the two applications. MPEP § 804 states:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, ... the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.
(MPEP § 804).

Thus, in the present instance, the present application should be allowed to issue at this time, with a terminal disclaimer being required, if necessary, upon the allowance of co-pending Application No. 10/696,335.

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Conclusion:

In view of the following arguments, all claims are believed to be in condition for allowance over the prior art of record. Therefore, this response is believed to be a complete response to the Office Action. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on October 24, 2007. Number of Pages: 12

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